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In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 702

CENTRAL FEDERAL SAVINGS AND LOAN ASSOCIATION OF PUERTO RICO,
PETITIONER,

v.

JOSE R. NOGUERA, SECRETARY OF THE TREASURY OF PUERTO RICO,
RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PUERTO RICO

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JOSE R. NOGUERA, SECRETARY OF THE TREASURY OF PUERTO RICO,
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TO THE HONORABLE THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES.

Comes the petitioner by its counsel, Pablo Defendini, and respectfully petitions this Honorable Court to issue a writ of certiorari to review the judgment of the Supreme Court of Puerto Rico which affirmed the dismissal of the complaint filed by petitioner in the Superior Court of Puerto Rico, San Juan Section, and in support of its petition does show:

Opinions of the Courts Below.

A copy of the official translation into the English language of the opinion and judgment of the Supreme Court of Puerto Rico, not yet officially published, and the opinion of the Superior Court of Puerto Rico, not officially reported, are included in the Appendix hereto.

Jurisdiction of this Court.

The judgment sought to be reviewed was made and entered September 20, 1962, and the grounds on which the jurisdiction of this Court is invoked are Pub. L. 87-189, Sec. 1, Aug. 30, 1961, 75 Stat. 417, 28 USCA 1258, and 62 Stat. 961 as amended, 28 USCA 2101.

Question Presented for Review.

The question presented for review arose on petitioner's complaint in the Superior Court of Puerto Rico seeking to nullify the assessment by respondent of personal property taxes on certain personal property of petitioner for the government fiscal years 1959-60 and 1960-61 on the ground that petitioner was a federal instrumentality and exempt from such taxation under Section 5(h) of said Home Owners' Loan Act of 1933.

The question thus presented for review is:

> Was petitioner Association under Section 5(h) of the Home Owners' Loan Act (48 Stat. 128, 12 USCA 1464(h)) exampt from the taxes assessed on its personal property by the Commonwealth of Puerto Rico?

(d) The Federal Statute and Commonwealth Statutes involved are:

(1) Section 5 of the Home Owners' Loan Act of 1933 (June 13, 1933, c. 64, 48 Stat. 128 et seq.; 12 USCA 1461 et seq); of which the following sections are set forth:

Sections 5(a) and (h), (12 USCA 1464(a) and (h):

"(a) In order to provide local mutual thrift institutions in which people may invest their funds and in order to provide for the financing of homes, the Board is authorized, under such rules and regulations as it may prescribe, to provide for the organization, incorporation, examination, operation, and regulation of associations to be known as "Federal Savings and Loan Associations", and to issue charters therefor, giving primary consideration to the best practices of local mutual thrift and home financing institutions in the United States."

"(h) Such associations, including their franchises, capital, reserves, and surplus, and their loans and income, shall be exempt from all taxation now or hereafter imposed by the United States (except the taxes imposed by sections 1410 and 1600 of Title 26 with respect to wages paid after December 31, 1939, for employment after such date, and except, in the case of taxable years beginning after December 31, 1951, income, war-profits, and excess-profits taxes); and all shares of such associations shall be exempt both as to their value and the income therefrom from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by the United States; and no State, Territorial, county, municipal, or local taxing authority shall impose

any tax on such associations or their franchise, capital, reserves, surplus, loans, or income greater than that imposed by such authority on other similar local mutual or cooperative thrift and home-financing institutions."

(2) Law No. 52 of July 11, 1921, as amended, creating the Savings and Loan Fund Association of the Employees of the Commonwealth of Puerto Rico (Laws of Puerto Rico, 1921, pp. 374 et seq.; 1925, pp. 766 et seq.; 1937, pp. 396 et seq.; 1939, pp. 556 et seq.; 1952, pp. 102 et seq.; 1953, pp. 52 et seq.; 3 LPRA 831 et seq..) from which the following sections are copied:

Section 1 (3 LPRA 831):

"There is hereby created a public institution, compulsory upon all permanent public employees and officials of the Commonwealth Government of Puerto Rico rendering services in Puerto Rico, including public school teachers, . . . the professors, officials and employees of the University of Puerto Rico, and the members, officers and chiefs of the Police of Puerto Rico, and upon the permanent employees of the Association hereby created; Provided, That the permanent officers and employees of the Commonwealth Government of Puerto Rico who are performing their duties in continental United States may become members of said Association, if they so desire, . . . and which institution shall be known as Savings and Loan Fund Association of the Employees of the Commonwealth Government of Puerto Rico, the purposes of which shall be to stimulate savings among its members and to insure them against physica disability or death, to make loans, to provide them with homes and

clinics for medical treatment for themselves and their families, and any other activity, which the board of directors may, after study, deem beneficial and adequate for the purposes hereof, subject to the laws which govern said association; and to promote by all available means and resources the betterment and individual and collective progress of the members thereof in the economic, moral and physical orders, for which purpose the directing body of said association is hereby granted the necessary powers and authority to prescribe regulations and to adopt the resolutions indispensable therefor, including the fixing and collection of uniform quotas for medical services."

Section 11 (3 LPRA 841):

". . . Likewise the board of directors may grant mortgage loans guaranteed by a first mortgage on rural or urban properties. . . .".

Section 23 (3 LPRA 854):

". . . By resolution of a general assembly of the members of the association, the board of directors may establish . . . , and building cooperatives for the building of dwellings for the members; . . .".

"The Savings and Loan Fund Association of the Employees of the Commonwealth Government of Puerto Rico is hereby authorized, upon resolution of its Board of Directors and the approval of the Secretary of the Treasury, to raise funds on its mortgage securities. . . , or otherwise negotiate the same, whenever it may be convenient for the purpose of broadening, improving and extending the services it renders to its members. . . .".

Section 1 of J.R. No. 39 of May 1, 1929 (Laws of P.R. 1929, p. 472, 3 LPRA 860):

"

"In the future, and at the end of each fiscal year, the net total obtained from interest, after the expenses of administration are deducted, shall be divided among the total of the funds saved, and shall be credited in the same manner as in the previous year in the "Dividend Account"; Provided, that at any time an employee dies or ceases to belong to the association for any reason . . . he shall have the right to receive as beneficiary, in addition to his savings, an amount equal to the percentage declared as a dividend for each year on the total amount of his savings in said year, plus the percentage which represents the first dividend declared on the total amount that he had saved on June 30, 1929, if he was a member of the Association on that date."

Section 26 (3 LPRA 857):

"Any amount which for any reason appertains to or must be delivered to any employee entitled to the benefits . . . , or to his legal beneficiaries or heirs, as the case may be, is hereby declared totally exempt from taxation, . . .".

Section 26(a) (3 LPRA 858):

"The properties of the Savings and Loan Fund Association of the Employees of the Commonwealth Government . . . are hereby declared exempt from the payment of all kinds of taxes."

Statement of the Case.

Petitioner is a federal savings and loan association chartered by the Home Loan Board under the provisions of the Home Owners' Loan Act of 1933 (48 Stat. 128, 12 USCA 1464). Its main office is in Arecibo, Puerto Rico, and it was and is dedicated to providing and maintaining facilities for mutual or cooperative savings and home financing in Puerto Rico pursuant to the provisions of said Act and the regulations of the Home Owners' Loan Board. On December 1, 1960 respondent the Secretary of the Treasury of Puerto Rico, notified petitioner with an assessment and imposition of taxes on certain of petitioner's personal property located in San Juan, with an assessed value of $32,670.00 for the government fiscal year 1959-60 (July 1, 1959 to June 30, 1960); and likewise for the fiscal year 1960-61 (July 1, 1960 to June 30, 1961). Such property had not been previously assessed. There were at the time no local savings and loan associations in Puerto Rico, nor any other local institutions providing and maintaining facilities for mutual or cooperative savings and home financing, available to the public in general, nor did there exist in Puerto Rico any local laws under which the organization of such institutions were authorized (The Banking Law of Puerto Rico, 7 LPRA et seq.),[1] but there was in Puerto Rico an institution known as the Savings and Loan Fund Association of the Employees of the Commonwealth of Puerto Rico that provided and maintained such facilities, and which petitioner contends is "similar" to a federal savings and loan association, which local association was expressly exempted from all taxation.

[1] Chapter III of Act No. 30 of March 9, 1911, Laws of Puerto Rico 1911, pp. 106-115 providing for the organization of Cooperative Building and Loan Associations was repealed in 1956 (Act No. 3 of January 9, 1956, 14 LPRA 1502).

In June of 1960 the Banking Law of Puerto Rico was amended to provide for the organization and creation of the Savings and Loan Labor Bank of Puerto Rico to encourage and facilitate regular savings on the part of workers and help finance housing, which Bank was expressly exempted from taxation by the following provision of law (Section 16 of Law No. 86 of June 14, 1960, Laws of Puerto Rico, 1960, p. 162, 7 LPRA 816):

> "The Labor Bank—including its capital, its reserves and surpluses and its loans and income—shall be exempt from all kinds of taxes heretofore or hereafter levied by the Commonwealth of Puerto Rico or by any political subdivision thereof."

(Excerpts from other provisions of the said Banking Law pertaining to this institution are set forth in the Appendix).

Petitioner seasonably filed a complaint before the Superior Court of Puerto Rico to set aside and nullify the said assessment in which it was alleged (Par. V.):

> "5. The aforesaid assessment notice and tax determination on personal property is null and has no legal value at all, inasmuch as it is contrary to the provisions of § 5(h) of the above-mentioned Act of the Congress of the United States of America, Home Owners' Loan Act of 1933 (12 U.S.C.A. 461), by virtue of which plaintiff was created and exists."

The same contention was made in petitioner's brief filed in the Superior Court of San Juan, in its petition for review and its brief filed in the Supreme Court of Puerto Rico.

The Superior Court of Puerto Rico made and entered a judgment dismissing the complaint, and the Supreme Court

of Puerto Rico on petition of petitioner issued a writ of review (statutory certiorari) and on such review affirmed the said judgment by a division of three of its judges and held that it was not necessary to decide whether petitioner was a federal instrumentality, and that it was not exempt from said assessment of taxes under Section 5(h) of said Home Owners' Loan Act of 1933.

Argument.

THE QUESTION HERE PRESENTED IS A NEW AND IMPORTANT ONE WHICH RELATES TO THE INTERPRETATION AND ADMINISTRATION OF AN IMPORTANT FEDERAL ACT AND THE DECISION OF THE SUPREME COURT OF PUERTO RICO IS PROBABLY IN CONFLICT WITH THE DECISIONS OF THIS COURT.

Although the Supreme Court of Puerto Rico stated that its was not necessary to decide whether petitioner, Central Federal Savings and Loan Association, was a federal instrumentality, upon the authority of some state decisions which it cited in its opinion, it strongly indicated that it thought that petitioner was not a federal instrumentality.

It seems quite probable, however, that when the question is presented this Court will decide that a Federal Savings and Loan Association chartered under the Home Owners' Loan Act of 1933 is a federal instrumentality. (*Federal Savings and Loan Insurance Corp.* v. *Kearney Trust Co.*, 151 F (2d) 720, 1945, 8th Cir.; *People* v. *Coast Federal Savings and Loan Assoc.*, 98 F. Supp. 311, 1951, U.S.D.C., S.D. Cal.; *First Federal Savings and Loan Assn.* v. *Loomis*, 97 F (2d) 831, 1938, 7th Cir.; *Waterbury Savings Bank* v. *Danaher*, 128 Conn. 78, 20 A. (2d) 455, 1941; *State* v. *Minnesota Federal Savings and Loan Association*, 218 Minn. 229, 15 N.W. (2d) 568, 1944; *United States* v. *Harper*, 241

F (2d) 103, 105, 1957, 7th Cir.; see also *Smith* v. *Kansas City Title & T. Co.*, 255 U.S. 180, 41 S. Ct. 243, 65 L. ed. 577, 1921, Federal Land Bank and Joint Stock Land Bank; *Pittman* v. *Home Owners' Loan Corp.*, 308 U.S. 21, 60 S. Ct. 15, 84 L. ed. 11, 124 ALR 1263, 1939, HOLC; *Knox Nat. Farm Loan Asso.* v. *Phillips*, 300 U.S. 194, 57 S. Ct. 418, 81 L. ed. 599, 108 ALR 738, 1937, Fed. Farm Loan Association; *Federal Land Bank* v. *Bismark Lumber Co.*, 314 U.S. 95, 62 S. Ct. 1, 86 L. ed. 65, 1941, Fed. Land Bank).

The federal government and its agencies and instrumentalities have a constitutional immunity from state taxation. In holding a national bank to be a federal instrumentality and immune from state taxation, Mr. Chief Justice Marshall said:

> "... The result is a conviction that the states have no power, by taxation or otherwise, to retard, impede, burden, or in any manner control the operations of the constitutional laws enacted by Congress to carry into execution the powers vested in the general government. This is, we think, the unavoidable consequence of that supremacy which the constitution has declared."

(*M'Culloch* v. *The State of Maryland*, 4 Wheaton 316-436, 4 L. ed. 579, 608-609). This constitutional immunity from state taxation has been recognized and declared by this Court on many occasions. (*Owensboro National Bank* v. *Owensboro*, 173 U.S. 664, 43 L. ed. 850, 1899; *Mayo* v. *U. S.*, 319 U.S. 441, 87 L. ed. 1504, 1943; *Jaybird Mining Co.* v. *Weir*, 271 U.S. 609, 70 L. ed. 1112, 1926; *Gillespie* v. *Oklahoma*, 257 U.S. 501, 66 L. ed. 338, 1922).

The tax here on personal property of petitioner is a direct tax and hence is clearly a burden on a federal instrumentality. In the absence of a permissive statute, such

property of petitioner would be immune from taxation. (*Kern-Limerick, Inc.* v. *Scurlock*, 347 U.S. 110, 74 S. 44, 403 98 L. ed. 546, 1954).

It is equally clear that Congress may waive the immunity of its instrumentality from state taxation, in whole or in part (*Gillespie* v. *Oklahoma*, supra) and it may prescribe what state taxes may be imposed and the terms and conditions under which they may be laid on property of a federal instrumentality. (*Pittman* v. *Home Owners' Loan Association*, supra; *Federal Land Bank* v. *Bismark Lumber Co.*, supra; *Federal Land Bank* v. *Crossland*, 261 U.S. 374, 67 L. ed. 703, (1923).

By Section 5(h) of the Home Owners' Loan Act of 1933 Congress exempted savings and loan associations from federal taxes with certain exceptions and then provided:

> "... ; and no State, Territorial, county, municipal, or local taxing authority shall impose any tax on such associations or their franchise, capital, reserves, surplus, loans, or income greater than that imposed by such authority on other similar local mutual or cooperative thrift and home financing institutions."

It is, we think, of fundamental importance to inquire into the reason and purpose of Congress in including this provision in the law.

The Supreme Court of Puerto Rico in its opinion said:

> "... , the purpose of Congress was to protect federal associations from possible discriminatory taxation on part of states against said federal associations and in favor of state associations."

This could hardly have been the purpose of Congress. In the first place these federal instrumentalities are constitu-

tionally immune from burdensome state taxation. And in the second place, independent of the matter of immunity, a discriminatory state tax on an instrumentality of the federal government is invalid. (*Moses Lake Homes v. Grant County*, 365 U.S. 744, 6 L. ed. (2d) 66, 81 S. Ct. 870, 1961). Such a provision was not necessary in order to portect the associations against state taxation or against discriminatory state taxation, and Congress must be assumed to have known that.

The provision is a conditional waiver of an existing immunity from taxation, and must have been included in the statute in order to give the states the right to impose certain taxes under certain conditions.

The reason and purpose of Congress in waiving tax immunity we think is to be found from a consideration of the Home Loan Bank system which it established.

In 1952, studies showed that home ownership in the United States was decreasing and that the people of the United States were rapidly becoming a nation of tenants. Of a total of some $20,000,000,000.00 of home mortgages state mutual building and loan associations held about $8,000,000,000 00 of these mortgages, savings banks, insurance companies, commercial banks and private investors held the rest. There was no adequate source of credit enabling these institutions to borrow on their mortgages, and there was no adequate long term home mortgage money available for prospective home owners. To remedy this situation Congress passed a law establishing Home Loan Banks from which building and loan associations and other financial institutions could borrow funds on their home mortgages, thus making available adequate long term mortgage money for prospective home owners at the mimimum cost.

While these Home Loan Banks could make direct mortgage loans, they were designed principally to serve as re-

serve banks. They were immune from federal taxation as well as state and local taxation. (See House Report No. 1418 of May 25, 1932, 72d. Congress, 1st Sess.; Senate Report No. 837 of June 15, 1932, 72d Congress, 1st Sess.).

It was obviously the purpose of Congress by these Home Loan Banks to encourage and increase the mutual thrift and home lending activities of local savings and loan institutions, not to curtail their activities nor compete with them through federal agencies or instrumentalities.

It soon became evident, however, that local savings and loan associations and other local institutions even with the aid of the Home Loan Banks would not be able to furnish adequate means of mutual savings and home financing, and by Sections 5 and 6 of the Home Owners' Loan Act of 1933, Congress authorized the creation of Federal Savings and Loan Associations. (See House Report No. 55 of April 25, 1933, 73d Cong., 1st Sess.; Senate Report No. 91 of May 15, 1933, 73d Cong., 1st Sess.). Here again, it is evident that Congress had no purpose of curtailing the activities of or competing upon unequal terms with local mutual savings and home financing institutions. In fact, provision was made for conversion of such local institutions into federal institutions upon request of the former.

It seems probable that Congress would have preferred that such institutions be immune from all federal and local taxation (not including income taxes on dividends and interest received by members). Such associations derive all of their income from their home owner borrowers. It is generally conceded that homes are more heavily taxed in the United States than any other values, and any tax whatsoever on mortgages on homes is a mere double taxation upon the same home owners and upon the same values. Furthermore, any ad valorem, franchise or capital tax on mutual savings and loan associations is a mere double or

multiple taxation upon the home owners financed and their homes because they are the only ones to pay such taxes since all the income of such associations is from the home borrowers. While one who pays for his home in cash pays the usual heavy real estate taxes, one who finances his home with the association pays both the real estate taxes and any taxes paid by the association. (*Russell, Savings and Loan Associations,* 1956, 1960 Mathew Bender & Co. pp. 122-123). Such taxes tend to defeat the purpose of Congress to assure the least costly home mortgage financing, increase home ownership and provide adequate thrift savings facilities for the nation.

On the other hand were the federal savings and loan associations to enjoy immunity from local taxation which burdens the local institution, the former would have a competitive advantage that would decrease and probably end the activities of the latter. Such a result would also be contrary to the Congressional purpose.

Congress was therefore careful to provide in the 1933 law that

> "; . . . no state . . . shall impose any tax on such associations . . . greater than that imposed . . . on other similar local mutual or cooperative thrift and home financing institutions."

The negative form in which this provision is written is not without reason. If no similar local institution exists, it cannot be said that any local tax is being imposed on it, and hence none may be imposed on a federal association. If no local institution exists, it cannot be said that the federal association enjoys any competitive advantage by its immunity from taxation and both purposes of Congress are achieved. Home mortgage money is being furnished at its lowest cost, and at the same time the federal associ-

ation is not competing unfairly with a similar local institution. The local authority does not in such case lose revenue it would have from a local institution because of unequal competition by a federal with a local institution. It is true that it is deprived of revenue from the federal institution, but Congress in its power and discretion has seen fit for its national purpose to refuse permission in such case to the local authority to tax its instrumentality. On the other hand, if a similar local institution exists and is not locally taxed, the federal association cannot be taxed. If the local institution exists and is taxed, so can the federal association be taxed.

Thus, in this case, if, as held by the Supreme Court of Puerto Rico, no similar institutions existed, then under Section 5(h) of the Home Owners' Loan Act of 1933, no tax on the personal property of the petitioner (a part of its capital) may be validly imposed.

The question here raised is a new one not heretofore decided by this Court or any other United States or State Court; it relates to the administration of an important Federal Act, and is probably in conflict with decisions of this Court.

But, it is submitted, there was a "similar local mutual or cooperative thrift and home financing institution" in Puerto Rico, namely, the Savings and Loan Fund Association of the Employees of the Commonwealth of Puerto Rico.

The word "similar" is not a synonym for identical. It is usually taken to mean "nearly corresponding, resembling in many respects, somewhat like, or having a general likeness". (*Thompson* v. *C.I.R.*, 203 F (2d) 820, 825, 4 Cir.; *U. S.* v. *Adams*, 160 F. Supp. 143, D.C. Ark.; *People* v. *Roberts*, 154 NYS 2d 201, 204, 2 Misc.-2d 668).

The word "mutual" as here used has a more precise meaning. In the case of Savings and Loan Associations,

it means that each savings dollar in a savings account in them has the same right to full participation in the earnings of the savings fund and has the same claim against the fund. (*Russell, Savings and Loan Associations*, p. 2). The Savings and Loan Fund Association of the Employees of the Commonwealth of Puerto Rico is clearly a mutual association. It is also obviously a cooperative association.

Two of its main purposes are to provide local thrift facilities and finance home ownership by first mortgage loans and it is empowered to raise money on such mortgages by the pledge of them as collateral or by negotiation.

It is true that its membership is not entirely voluntary, although for some persons it is, and it is true that its membership is limited to Government employees. But the employees of any modern government, state or federal, comprise a substantial segment of the mature population, and that is certainly true in Puerto Rico with its Land Authority, Water Resources Authority, Transportation Authority, Ports Authority, Development Bank, etc.[2]

There are of course certain geographical limitations of a Federal Savings and Loan Association.

While in some respects this local institution differs from a federal savings and loan association, in its fundamental purposes and activities it is like the federal association.

In establishing the Home Owners Loan Banks in 1933, the local institutions which Congress considered similar in kind were Building and Loan Associations, Savings and Loan Associations, Cooperative Banks, Homestead Associations, Savings Banks, Trust Companies, and other banks with time deposits (except national banks) and certain insurance companies (House Report No. 1418, 72d Congress, 1st Sess., especially at page 4; see also Senate Report No. 837, 72d Congress, 1st Sess.). By inserting

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[2] See 28 LPRA 241, et seq.; 22 LPRA 191, et seq.; 23 LPRA 331 et seq.; 7 LPRA 551, et seq.

the word "mutual" in Section 5(h) of the Home Owners' Loan Act of 1933, "similar local institutions" would seem not to include Savings Banks, Trust Companies, insurance companies and other banks. But these institutions were dissimilar to the federal Savings and Loan Associations. In fact these federal associations are the only financial institutions in the United States dedicated by law and practice almost exclusively to the financing of homes and mutual thrift activities. (*Russell, Savings and Loan Associations*, p. 10). And there were in 1959 at least forty-eight different kinds of Buildings and Loan Associations and Savings and Loan Associations and cooperative banks in the forty-eight states and still other kinds in Hawaii and none in Puerto Rico and Alaska. (*Russell, Savings and Loan Associations*, p. 44).

In using the word similar, therefore, Congress must have had in mind the existence of many dissimilarities in similar institutions. In view of the purposes of Congress and the basic material, mutual thrift and home financing facilities, with which Congress was dealing, any local mutual or co-operative associations having as their purposes and activities the providing of such facilities would fall within the provision "similar local mutual or cooperative thrift and home financing institutions".

If the mere restriction of membership of a particular local institution were sufficient in itself to eliminate it as a "similar local" institution, a state could effectively defeat the purpose of Congress by providing for the creation of several different institutions limited to several different classes of persons, which in their entirety might include all or a majority of the total mature inhabitants of the state. Thus in Puerto Rico, in 1960 the Savings and Loan Labor Bank of Puerto Rico was authorized, which was exempted from taxation. (See Appendix). This association is limited to workers who are members of a labor union. Since a

very large percentage of workers are such members we have another mutual thrift and home financing institution of which a very large segment of the mature inhabitants of Puerto Rico may become members.

The question here involved is one of the authoritative interpretation of an important Federal Act, and it is a new question. It is believed that the interpretation given by the Supreme Court of Puerto Rico to the Act is probably in conflict with the decisions of this Court.

Conclusion.

For the foregoing reasons it is respectfully submitted that this petition for writ of certiorari should be granted, and that this Court should review and reverse the decision of the Supreme Court of Puerto Rico.

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Appendix.

English translation of the opinion of the Supreme Court of Puerto Rico in the case of First Federal Savings and Loan Association v. Jose R. Noguera, etc., Case No. 214, decided September 20, 1962.

"Division composed by Mr. Justice Perez Pimentel, as Chief Judge of Division, Mr. Justice Rigau and Mr. Justice Davila

Opinion of the Court delivered by Mr. Justice Rigau

San Juan, Puerto Rico, September 20, 1962

The Secretary of the Treasury notified the savings and loan association named "First Federal Savings and Loan Association of Puerto Rico", petitioner herein, a tax assessment on personal property. The petitioner disagreed with the tax imposed on it on the ground that its property is exempt from same pursuant to § 5(h) of the Federal Home Owners' Loan Act of 1933, 48 Stat. 128, 12 U.S.C.A. § 1464(h), and filed a complaint before the Superior Court. The latter upheld the validity of the tax.

In view of the allegations that follow, it is fitting to make clear at the beginning that the power of the Congress of the United States to exempt the instrumentalities of the Federal Government from taxation, is not at issue in this case. It is well known that Congress has the power to determine, within the limits of the Constitution, to what extent its instrumentalities shall enjoy immunity from taxation. *Federal Land Bank* v. *Kiowa County*, 368 U.S. 146, 149 (1961); *Carson* v. *Roane-Anderson Co.*, 342 U.S. 232 (1952); *Cleveland* v. *United States*, 323 U.S. 329 (1945); *Maricopa County* v. *Valley National Bank*, 318 U.S. 357 (1943); *Federal Land Bank of St. Paul* v. *Bismark Lumber Co.*, 314 U.S. 95 (1941); *Pittman* v. *Home Owners' Loan Corp.*, 308 U.S. 21 (1939); *Graves* v. *New York ex rel. O'Keefe*, 306 U.S. 466 (1939); *Des Moines*

National Bank v. *Fairweather*, 263 U.S. 103 (1923); *First National Bank* v. *Adams*, 258 U.S. 362 (1922); *Owensboro National Bank* v. *Owensboro*, 173 U.S. 664 (1899).

The issue revolves on whether or not the above-mentioned § 5(h) of the aforesaid act of Congress exempts the savings and loan associations incorporated or which might be incorporated under the above-cited act from the taxes imposed or which might be imposed by the Commonwealth of Puerto Rico. Let us turn presently to the text of the statute. In so far as pertinent, said § 5(h) reads as follows:

> "No State, Territorial, county, municipal, or local taxing authority shall impose any tax on such associations or their franchises, capital, reserves, surplus, loans, or income *greater than* that imposed by such authority on other similar local mutual or cooperative thrift and home financing institutions." 12 USCA sec. 1464(h). (Italics ours).[1]

Petitioner's position before us is tripartite. It raises the following three contentions: (1) That it (the petitioner) is an instrumentality or agency of the Federal Government and, therefore, is exempt from state taxation; (2) that the power granted by the afore-cited § 5(h) to the states and other local authorities to impose taxes on the federal savings and loan associations (such as the petitioner) does not operate in Puerto Rico because no local institution similar to petitioner exists here; and (3) that the above-mentioned power granted by § 5(h) does not operate in Puerto Rico because an institution similar to the petitioner exists here, namely, the Puerto Rico Government Employees Association, which is exempt from taxation.

Thus, in its first contention petitioner maintains that

[1] Because it expressly so provides, this act is applicable to Puerto Rico. 48 Stat. 134 (1933); 12 USCA 1466.

there is no taxing power on the part of the Commonwealth in this case. In the second argument it acknowledges that *there is* said taxing power, but alleges that it does not operate because in Puerto Rico there *does not exist* a local institution similar to it. In its third contention it also admits that there is the taxing power, but alleges that it does not operate because there *exists* in Puerto Rico a local institution similar to it, which is exempt from taxation. "Allegans contraria non est audiendus" the Romans used to say, but let us proceed in view of Rule 65 of the Rules of Civil Procedure.

1. As to contention number 1 above-mentioned, the truth is that the Commonwealth has the right to tax. The reading of the statute convinces us thereof. Upon approving the act on those terms, Congress expressly authorized the states and the other local taxing authorities to impose taxes on those federal savings and loan associations provided such taxes are not greater than those imposed on similar local institutions, that is, those incorporated under state laws. It is likewise acknowledged and explained by a well-known author in the field of savings and loan associations, Russell, *Savings and Loan Association*, M. Bender & Co., N. Y., 2d ed., 1960, pp. 570-71.[2]

The cases have consistently upheld the foregoing construction. Several kinds of state and local taxes imposed on federal savings and loan associations have been upheld by the courts. It is proper to make clear that within the context of the act of Congress involved herein and that of

[2] ". . . Congress, however, has granted the state the right to tax such institutions provided it is done uniformly at the same rate that similar state institutions are taxed. . . . Stated positively, the meaning (of section 5-h) would be that any state may impose any such tax on federal associations, provided any such tax is not greater than the tax or taxes on similar state institutions. In the absence of a specific exemption, the provision appears to authorize almost any form of nondiscriminatory tax; . . . Not being federally owned, federal savings associations are naturally subject to such state taxes." Russell, *op. cit.*

this opinion, as well as of the case law we shall cite, when the term "federal" savings and loan association is used, what the word "federal" means is that those associations are incorporated under the above-mentioned federal act and not under a state law. It does not mean that those institutions are property of the Federal Government nor that its officials and employees are in the payroll of said government. Conversely, when the cases speak of state savings and loan associations, they refer to associations incorporated under state legislation.

Examples of that case law to which we have referred in the preceding paragraph and which is in accord with what we are deciding are the following cases: Capital tax, *State* v. *MacCorkle*, 123 S. E. 2d 888 (1962); property tax, *Charleston Federal Savings and Loan Association* v. *Anderson*, 30 S. E. 2d 513 (1944), affirmed in 324 U.S. 182, 89 L. ed. 857 (1945); *Charleston Fed. Sav. & Loan Ass'n.* v. *James*, 200 S. E. 845 (1939); and *In Re Hancock County Fed. Sav. & Loan Ass'n.*, 25 S. E. 2d 543 (1943); income tax, *State* v. *Minnesota Fed. Sav. & Loan Ass'n.*, 15 N. W. 2d 568 (1944); franchise tax, *First Fed. Sav. & Loan Ass'n.* v. *Johnson*, 122 P. 2d 84 (1942); employment security, *Texas Unemployment Compensation Commission* v. *Metropolitan Building*, 139 S. W. 2d 309 (1940).

The savings and loan associations, although technically not banks, have several purposes and procedures similar to those of banks. In some respects the difference between those associations and the bank is factual and in others it is rather a matter of terminology. Said associations do not accept "deposits", but people may entrust their savings to them. Depositors are not "creditors" but rather "shareholders" or "members". Although the associations may demand previous notice from the shareholders for the withdrawal of funds, the general practice is that the latter may withdraw whenever they wish as if it

were a checking account. *Porter* v. *Aetna Casualty Co.*, 370 U.S. 159, 161 (1962). Shareholders do not receive "interest" but "dividends". The associations do not issue "manager's checks" but they issue "money orders".

The act which authorizes the organization and incorporation of federal savings and loan associations states that those associations may be organized in order to provide local thrift institutions and home-financing institutions. 12 USCA § 1464(a). Some courts have stated that those associations are instrumentalities of the Federal Government. It seems that they do presume because said associations are incorporated under an act of Congress.[3] On the other hand, other courts have held that those institutions are not instrumentalities of said government.[4] In *Texas Unemployment Compensation Commission, etc.*, cited in footnote 4 of this opinion, the problem was raised and analyzed carefully and realistically. The court found that said associations are not instrumentalities of the Federal Government.

This second alternative seems more convincing for the following reasons:

(a) The Act itself which authorizes the creation and incorporation of those savings and loan associations nowhere states that they are agencies or instrumentalities of the Federal Government.

(b) The mere fact that they are incorporated under a federal act and that they are under the supervision of a

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[3] *U.S.* v. *Harper*, 241 F.2d 103, 105 (1957); *People of State of California* v. *Coast Fed. Sav. & Loan Ass'n.* 98 F. Supp. 311, 316 (1951); *State* v. *Minnesota Fed. Sav. & Loan Ass'n.*, 15 N.W. 2d 568, 573 (1944).

[4] *Texas Unemployment Compensation Commission* v. *Metropolitan Bldg. & Loan Ass'n.*, 139 S.W. 2d 309, 312-14 (1940); *First Federal Sav. & Loan Ass'n.* v. *Johnson*, 122 P. 2d 84, 86 (1942); *Capitol Bldg. & Loan Ass'n.* v. *Kansas Commission of Labor*, 83 P. 2d 106 (1938); *North Carolina Unemployment Commission* v. *Wachovia Bank & T. Co.*, 2 S.E. 2d 592 (1939).

federal agency (the Federal Home Loan Bank Board) does not automatically make them instrumentalities of the Government of the United States just as commercial banks incorporated under the state Banking Law and which operate under the supervision of the Secretary of the Treasury are not instrumentalities of the state government.

(c) Those associations are not created through an act of Congress. What the federal act does is to permit its organization or incorporation in the same manner that state banking and private corporation laws do not create the banks nor the private corporations, but permit their organization and incorporation and provide their regulations by the state for reasons of public interest.

(d) Those associations are not property of the Federal Government, nor are their officials and employees, officials or employees of said government.

(e) A strong evidence that Congress itself did not regard them as instrumentalities of the government is the fact that in its own act (§ 5) it specifically authorized states to tax them with the aforementioned limitation, which we will explain further on. Contrariwise, when Congress has created federal banks it has specifically granted them immunity to state taxation. *Federal Land Bank* v. *Bismarck Lumber Co.*, 314 U.S. 95, 86 L. ed. 65 (1941); *Annotation*, 86 L. ed. 72.

(f) Said institutions are voluntarily organized by private citizens, operate for profit and compete with state savings and loan associations. For instance, in its *Annual Report* of 1961, the petitioner informs its members as follows:

> "Once more there has been registered a considerable increase in the income and profits of the association in comparison with former years. The gross income reached the figure of $4,657,762.69 and exceeds that of last year by the sum of $801,928.69 which, until

that date had been the highest in our history, and which is equivalent to an increase of 20.8 per cent." (Page 9.)

"During 1961 the association paid to its depositors dividends for the sum of $2,162,684.30, which constitutes an increase of $299,713.96 over last year, a progressive increase which has been maintained through our thirteen years' existence not only with respect to the amount of dividends paid, but aiso to the rate of interest thereof.

"As you already know, our association constitutes a cooperative in which the depositors are the beneficiaries of the profits obtained by the association, which profits are used entirely for the payment of dividends once operating and administration expenses and the amount which by regulation must be put in reserve, have been deducted." (Page 12.)

"With this new acquisition (the building of the Barrio Obrero Branch in San Juan) the association becomes the owner of the buildings occupied by three of its four branches, to wit: Munoz Rivera Avenue in Rio Piedras; De Diego Street in Rio Piedras, and Barrio Obrero. The depreciated value of these buildings including the site of our main office amounts to $2,334,446.14. Its real market value may be very conservatively estimated in excess of $3,000,000.00.

"The construction of our new building confronted us with the need of making a decision: to the old building on Ponce de Leon Avenue and Alianza Street, deciding that it was to the best interest of the association to sell the same and it was sold with a small profit shortly after we moved." (Page 13.) In view of this reality, it is difficult to believe that petitioner is an "agency or instrumentality of the Federal Government".

It is true that the law provides that those associations will be members of the Federal Home Loan Bank and may be used by the Federal Government as its fiscal agents (they could perform such duties as receiving payments on behalf of the government, be depositors of federal funds, etc.), but only when the Secretary of the Treasury of the United States so designates them. 12 USCA § 1464 (f) and (k). However, this fact alone does not make them instrumentalities of the government. The fact that the act grants authority to the Secretary of the Treasury to designate any of those associations as fiscal agents of the government, *ipso facto* (there are thousands in the United States) [5] does not make them all agencies or instrumentalities of the government.

As stated in *Texas Unemployment Commission* v. *Metropolitan, etc., supra*, pp. 312 and 313, the courts have held that member state banks of the Federal Home Loan Bank or of the Federal Reserve System and which by virtue thereof are required to act as fiscal agents of the Federal Government are not federal instrumentalities. Furthermore, such federal savings and loan associations render no different service for the Federal Government from that required of the state-created savings and loan associations which become members of the Federal Home Loan Bank and said state associations have not been considered to be instrumentalities of the Federal Government.

It might have been important, for the purposes of this case, to decide whether or not petitioner is a federal instrumentality, if Congress would have kept silent as far as the imposition of state taxes is concerned, but Congress decided the issue expressly authorizing the imposition of said taxes in § 5(h) of the Act. Therefore, it is unnecessary that we decide said question since the outcome of this case

[5] Russell, *op. cit.*, p. 145.

would be the same in either case. Whether or not petitioner is considered a federal instrumentality, state taxation is permitted by virtue of § 5(h) above-cited. *State* v. *Minnesota Fed. Sav. & Loan Ass'n.*, supra; *People of State of California* v. *Coast Federal Savings & Loan Ass'n.*, 98 F. Supp. 311, 319 (1951). We have deemed it convenient, however, to discuss at length in order to clarify the question raised by petitioner in this respect.

We also conceive that under specific circumstances and in the discharge of its duties as agent of the Federal Government, thus expressly designated by the Secretary of the Treasury, one of those associations, or several, as the case may be, be or should be considered an instrumentality of said government for specific purposes. But that would certainly not be the case as to state taxes because, as we have seen, the federal act itself authorizes them.

2. Petitioner's second contention consists of the allegation that taxation does not lie because there do not exist in Puerto Rico local institutions similar to it. The contention is wrong for three reasons. First, to uphold that position would be tantamount to adding to the federal act a condition which Congress did not include therein. Second, in strict logic the contention is fallacious, since the state is not imposing on petitioner any tax greater than that which it is imposing upon similar local institutions because, as petitioner points out, these do not exist. One of the great masters teaches that the life of the law has not been logic,[6] but, may we add, it has not been fallacy either.

Third, said contention entirely disregards the purpose of the condition or limitation prescribed by Congress in the above-cited § 5(h). In providing that state taxes imposed upon federal savings and loan associations could not be greater than those imposed on similar local institutions,

[6] Holmes, *Common Law*, p. 1, 1946 ed.

the purpose of Congress was to protect federal associations from possible discriminatory taxation on part of the states against said federal associations and in favor of state associations. Its purpose was not to grant them tax exemption. *Laurens Federal Savings & Loan Ass'n.* v. *South Carolina Tax Comm.*, 365 U.S. 517, 5 L. ed. 2d 749, 752 (1961); *State* v. *Minnesota Federal Savings & Loan Ass'n.*, supra, page 573; *First Federal Savings & Loan Ass'n.* v. *Johnson*, supra, page 88, Russell, *op. cit.*, page 571.[7]

The intention of Congress to protect federal associations from discriminations by the states, tending to favor state associations, does not arise whimsically. It is based on experience and on the history of the relationship between the states and banking institutions incorporated by or under federal legislation since the beginning of the republic. On previous occasions the states had taken retaliatory and discriminatory measures against banking organizations incorporated by virtue of Congressional legislation.

It will be remembered that the first bank in the United States was incorporated by act of Congress in 1791, mainly due to the efforts of the Secretary of the Treasury, Antillean Alexander Hamilton, and in spite of the opposition of the Secretary of State, Thomas Jefferson, Congressman James Madison, and the Attorney General, Edmund Randolph.[8] Until the Civil War the controversy on national banks was kept alive although sometimes submerged under other more urgent problems. When the 20-year franchise of the Bank of the United States was about to expire the

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[7] "The purpose (of section 5-h) was to protect federal associations from discriminatory taxation which would put them on any less favorable basis than state building and loan associations." *State* v. *Minnesota Fed. Sav., etc., supra*, p. 573.

[8] 1 Stat. 191 (1791); Swisher, *American Constitutional Development*, 2d ed., 1954, p. 72.

state banks assumed the leadership of those that opposed Congress from renewing its franchise. The opponents of the national bank were successful and said bank had to close its doors when the franchise expired in 1811.

An example of how the feeling ran at that time on that issue is the resolution approved by the Legislature of Pennsylvania "instructing" the senators and representatives of that state in Congress "to use every exertion, in their power, to prevent the charter of the Bank of the United States from being renewed, or any other bank from being chartered by Congress, designed to have operations within the jurisdiction of any state, without first having obtained the consent of the legislature of such state."[9] The leaders in the controversy were, among others, John Calhoun, Daniel Webster, John Randolph, Madison and Henry Clay, some of whom, like Webster and Clay, entirely changed their positions through the years that followed.

Mainly because of the needs which arose as a result of the war with Great Britain, those in favor of the national bank again prevailed in Congress and they approved a new act incorporating in 1915 the second Bank of the United States, which Madison vetoed, but signed it the following year.[10] The resentment on the part of the states was such that many approved legislation hostile to the new Bank of the United States. For example, Indiana provided in its constitution that any bank chartered outside the state could not do business within its borders. Illinois, also by constitutional provision, forbade the establishment of any but state banks. In Tennessee the Legislature enacted a law imposing high yearly duties on any bank not chartered under its authority for the privilege of banking within said

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[9] American State Papers, VIII, Finance, II, p. 467, cited in Swisher, *American Constitutional Development*, 2d ed., 1954, p. 171.

[10] 3 Stat. 266 (1816).

state. Similar economic reprisals were taken by the Legislature of Kentucky, Ohio, Georgia and Maryland. The purpose of these measures was to make it impossible for the Bank of the United States to operate in those states and thus defeat the intention of Congress.[11]

Upon mentioning the state of Maryland in connection with that political and economic controversy, we immediately recall the famous *McCulloch* v. *Maryland* case, decided in 1819,[12] which arose from that controversy. In his opinion, Marshall, upon explaining the implied powers of the Federal Government, employed to a great extent the arguments used by Hamilton in 1791 when he was Secretary of the Treasury in his opinion to the President recommending that he sign the act for the first Bank of the United States. On that occasion the President, in view of the importance of the matter and of the controversy it had originated, requested the opinions of his Attorney General, Randolph, of his Secretary of State, Jefferson, and of his Treasurer, Hamilton.[13] As is known, that case concerned an entity which was a creature of Congress, whose purposes were eminently governmental and which was an instrumentality of the Federal Government. The decision of the Supreme Court was very controversial and roused profuse and strong pro and con expressions among the newspapers, lawyers and politicians of that time.[14]

The controversy on the Bank remained dormant and exploded again near the expiration date of the franchise.

[11] Beveridge, *Life of John Marshall* (4 Vols., 1916-1919), IV, 206-208; Charles Warren, *The Supreme Court in United States History* (rev. ed., 2 Vols., 1926), I, 505-506; Swisher, *op. cit.*, pp. 173-74.

[12] 4 Wheaton 316. For some interesting comments on this case, see Beveridge, *op. cit.*, IV, Chap. 6; Warren, *op. cit.*, I, Chap. 12; Swisher, *op. cit.*, pp. 174-78.

[13] *The Works of Alexander Hamilton, ed. D. C.* Hamilton, 7 Vols., 1850-1851, IV. pp. 104-138; Swisher, *op. cit.*, pp. 172-74 and 176-77.

[14] Warren, *op. cit.*, I, pp. 511-540; Beveridge, *op. cit.*, IV, p. 309.

which was also for 20 years, of the second Bank of the United States. Andrew Jackson had been President since 1829 and if he were reelected it would correspond his administration to decide whether or not the Bank's franchise would be renewed. When those in favor of the Bank were convinced that Jackson did not favor the renewal, they started campaigning against Jackson and in favor of his opponent Henry Clay. The Bank itself was involved actively, and at times improperly, in the political campaign.[15] Jackson was elected for a new term, but not so the Bank, which ceased to exist when its franchise expired in 1836

It is unnecessary to continue with the historical background. To conclude, it will suffice to say that serious banking and currency problems which again made crisis during the Civil War were involved in that political controversy. A system of national banks different from the concept underlying the two former experiments was then created.[16] Said system operated until 1913 when it was substituted by the present system (Federal Reserve System), established during President Wilson's administration.

Naturally, we are not taking sides on the historical controversy. Besides, the case of federal savings and loan associations in different; they are the product of another era, of other legislation based on different premises, and are not national banks, but, as we have seen, institutions of a different nature. Nevertheless, when their incorporation under the federal act in 1933 was authorized, there already existed the state associations in the different states, and in view of the possible and perhaps probable state discrimination, Congress deemed it necessary to include in the law the protection discussed above.

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[15] Swisher, *op. cit.*, pp. 180-85.

[16] Davis, *The Origin of the National Banking System*, Senate Doc. 582, 61st Cong., 2d Sess., 1910; 12 Stat. 665.

3. Petitioner's third and last contention is based, contrary to that alleged in the second, that there exists in Puerto Rico an association similar to the "First Federal Savings and Loan Association", namely, the Employees Association of the Government of Puerto Rico, which is exempt from taxation and that, therefore, petitioner is also exempt pursuant to the provisions of the above-cited § 5(h). This contention is little less than frivolous. The Employees Association of the Government of Puerto Rico[17] is "a *public* institution, *compulsory* upon all permanent public employees and officials" of the Government of Puerto Rico, "the purposes of which shall be to stimulate savings among its members and to insure them against physical disability or death, to make loans, to provide them with homes and clinics for medical treatment for themselves and their families, and any other activity which the board of directors may, after study, deem beneficial and adequate for the purposes hereof, subject to the laws which govern said association; and to promote by all available means and resources the betterment and individual and collective progress of the members thereof in the economic, moral and physical orders, for which purpose the directing body of said association is hereby granted the necessary powers and authority to prescribe regulations and to adopt the resolutions indispensable therefor, including the fixing and collection of uniform quotas for medical services." (Italics ours.) 3 L.P.R.A. § 831.

The act which creates said Employees Association orders the deduction of a monthly quota from the salaries of all permanent public employees and officials, which sums are set aside by the Secretary of the Treasury to constitute the Savings and Loan Fund. Said institution is governed by a board of directors in which, by operation of law, each

[17] That is its new name. 3 L.P.R.A. § 831, 1961 Supp.

of the three branches of government, the legislative, executive and judicial have representatives. The act also has specific provisions as to applications for and approval of loans, life and disability insurance, leave of absence, deductions, the appointment of its Secretary-Accountant and other personnel, etc. 3 L.P.R.A. §§ 831-861. The great difference between these two institutions is clear. *Cf. State* v. *Minnesota Fed. Sav. & Loan Ass'n., supra,* in which for tax purposes also, the much less obvious difference between federal savings and loan associations and some credit unions organized under the state law of Minnesota, was upheld.

We conclude that petitioner is not exempt from the payment of property taxes and, therefore, the trial court did not err in so holding. The judgment rendered in this case by the Superior Court on August 28, 1959, will be affirmed.

(sgd) MARCO A. RIGAU
Associate Justice."

English translation of the opinion of the Supreme Court of Puerto Rico in the case herein

IN THE SUPREME COURT OF PUERTO RICO

No. 557

Writ of Review

(Taxes)

CENTRAL FEDERAL SAVINGS AND LOAN ASSOCIATION OF PUERTO RICO,

Plaintiff-petitioner,

v.

JOSE R. NOGUERA, Secretary of the Treasury,

Defendant-respondent.

Division composed by Mr. Justice Perez Pimentel, as Chief Judge of Division, Mr. Justice Rigau, and Mr. Justice Davila

Opinion of the Court delivered by Mr. Justice Rigau

San Juan, Puerto Rico, October 2, 1962

This case presents a situation similar to the one we considered in *First Federal Savings & Loan Association of Puerto Rico* v. *Secretary of the Treasury,* — P.R.R. —, decided September 20, 1962. As in that case, the question posed here is the imposition of taxes by the Commonwealth of Puerto Rico on property belonging to a federal savings and loan association and the application of § 5(h) of the Home Owners' Loan Act of 1933 (48 Stat. 128; 12 USCA § 1464(h)). That act was extended to Puerto Rico since its origin in 1933, by express provision of the statute itself. 48 Stat. 134; 12 USCA § 1466.

As to the issues raised by petitioner herein, (1) the meaning and application of the aforesaid § 5(h), (2) the nature of federal savings and loan associations, and (3) the nature of the Puerto Rico Government Employees Association, we have nothing to add to our recent holding in the above-mentioned *First Federal* case.

However, this case raises an issue that, although mentioned in *First Federal*, must be considered more fully now since it is raised here and was not raised in the former case. We refer to the credit unions that may be organized in Puerto Rico pursuant to the Credit Unions Act, No. 10 of July 1, 1947, as amended, 7 L.P.R.A. §§ 651-694, which, because they are non-profit institutions, are tax exempt, 7 L.P.R.A. § 694.[1]

The aforesaid section 5(h) authorizes local governments to impose taxes on federal savings and loan associations provided such taxes are not greater than those imposed on local similar institutions.[2] Petitioner alleges that by virtue of that section it is tax exempt because the law of Puerto Rico authorizing the organization of credit unions exempts the latter from the payment of taxes.

If the credit unions involved here were institutions similar to federal savings and loan associations, petitioner would be correct, but the fact is that, as we shall see, they are different institutions, of a different composition, of a different operation and with different purposes, and, therefore, the exemption of the former does not automatically signify the exemption of the latter.

In the leading case of *State* v. *Minnesota Federal Savings & Loan Ass'n*, 15 N.W. 2d 568 (1944), the Supreme Court of Minnesota faced a situation like that involved

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[1] The official title in English of that act is "Credit Unions Act". See, the English version of § 1 of Act No. 10 of July 1, 1947, Laws of Puerto Rico, Fourth Extraordinary Legislature of the 16th Legislative Assembly, p. 40; and annotation under 7 L.P.R.A. § 651.

[2] That section reads:

"[No] State, Territorial, county, municipal, or local taxing authority shall impose any tax on such associations or their franchise, capital, reserves, surplus, loans, or income greater than that imposed by such authority on other similar local mutual or cooperative thrift and home financing institutions." 12 USCA § 1464(h).

here: that case involved a state tax, the same § 5(h) invoked here, a federal savings and loan association operating under the same federal act involved here, and an exemption granted by the state law to credit unions organized under the state credit unions act. To make that case more similar to ours, the Minnesota credit unions act is quite similar to the act of Puerto Rico; in some places its provisions are alike, word by word. See, Laws of Minnesota, 1925, pp. 232-238, and compare with 7 L.P.R.A. §§ 651-694. Both acts are also quite similar to the Federal Credit Union Act, 48 Stat. 1216 (1934); 12 USCA §§ 1751-1772.[3] The three acts regulate the same institution. These "cooperativas de credito" are known in the United States as "credit unions" and they are thus called by state laws, the federal act on the subject and the official English version of our own act, cited in footnote. 1.

In the above-cited case of *State* v. *Minnesota Federal*, at pp. 572-574, the Court made a thorough analysis of both institutions—credit unions and federal savings and loan associations—and reached the conclusion that they were different institutions and that hence, and in the light of a reasonable construction of § 5(h), the imposition of a state tax on federal savings and loan associations was valid.

The Supreme Court of Minnesota said at p. 572:

> " . . . The credit unions are created especially for the purpose of providing people of moderate means, salaried employes, and wage earners with an institution where they may borrow money for personal needs, such as medical bills and to meet temporary emergencies. . . ." And it stated further:

[3] We have found nothing in the legislative history of the Puerto Rico act indicating its origin, but its similarity with the Minnesota act is so great that it cannot be a mere coincidence, for which reason we think there is some connection between those acts and probably also between those statutes and the federal act.

> " . . . The trial court held that the differences between the defendant and the credit unions constituted a sufficient basis for separate classification for the purpose of taxation. In this we agree. . . ."

Upon examining the situation of the case at bar and the Credit Unions Act of Puerto Rico, we reach the same conclusion on the following grounds:

(a) The main purpose of federal savings and loan associations, in addition to encourage saving, is to provide home financing. 12 USCA § 1464, whereas the main purpose of credit unions, in addition to encourage saving, is to afford credit to persons of moderate financial means at reasonable rates of interest for their urgent personal needs. 7 L.P.R.A. § 651; *State* v. *Minnesota, etc., supra.*

(b) Credit unions are non-profit associations, 7 L.P.R.A. § 694, and federal savings and loan associations are institutions for profit, *First Federal, etc., supra.*

(c) Credit unions may be organized only by persons who have a bond of common interest either through their work or through common membership in some organization, or by groups residing in well-defined neighborhoods, 7 L.P.R.A. § 663. Federal associations do not have this limitation.

(d) The members of credit unions have only one vote each, notwithstanding the number of shares they own, and voting by proxy is prohibited, 7 L.P.R.A. § 665. The members of federal associations may vote by proxy and have as many votes as shares, up to a maximum of fifty votes. The importance of this difference may be realized in connection with the nature and operation of each one of these two kinds of institutions.

(e) Credit unions make loans exclusively to their members, that is, persons having their savings in those institutions, or to other cooperative associations in special cases.

Federal associations are not thus limited; they make loans on real property. 12 USCA § 1464(c).

(f) Credit unions mainly make small personal loans, whereas federal savings and loan associations make large loans secured by mortgage.

(g) Congress itself considered them different institutions and to that effect it approved two different acts: the Home Owners' Loan Act of 1933 under which the federal savings and loan associations are incorporated, and the above-mentioned Federal Credit Union Act of 1934.

For the foregoing reasons we hold that two different institutions are here involved; that they may be dealt with differently in taxing matters; that petitioner is not tax exempt; and that, therefore, the trial court did not err in so holding. The judgment entered by the Superior Court, San Juan Part, in this case on June 21, 1961, shall be affirmed.

(s) Marco A. Rigau
Associate Justice

English translation of the judgment of the Supreme Court of Puerto Rico

IN THE SUPREME COURT OF PUERTO RICO

No. 557

Writ of Review

(Taxes)

CENTRAL FEDERAL SAVINGS AND LOAN ASSOCIATION OF PUERTO RICO,

Plaintiff-petitioner,

v.

JOSE R. NOGUERA, Secretary of the Treasury,

Defendant-respondent.

Division composed by Mr. Justice Perez Pimentel, as Chief Judge of Division, Mr. Justice Rigau, and Mr. Justice Davila

JUDGMENT

San Juan, Puerto Rico, October 2, 1962

For the reasons stated in the foregoing opinion, the judgment entered in this case by the Superior Court, San Juan Part, on June 21, 1961, is hereby affirmed.

It was thus decreed and ordered by the Court as witnesses the signature of the Chief Justice.

(s) LUIS NEGRON FERNANDEZ
Chief Justice

I attest:

(s) IGNACIO RIVERA
Secretary

English translation of the judgment of the Superior Court of Puerto Rico, San Juan part

IN THE SUPERIOR COURT OF PUERTO RICO
SAN JUAN PART

Civil No. 60-2818
60-10186
Property Taxes

CENTRAL FEDERAL SAVINGS AND LOAN ASSOCIATION,
Plaintiff,
v.
JOSE R. NOGUERA, Secretary of the Treasury,
Defendant.

JUDGMENT

Plaintiff is a Federal Savings and Loan Association organized as a corporate instrumentality of the United States under the Home Owners' Loan Act of 1933 (12 USCA §§ 1461-1468). This act provides —§ 1464(h)— that " . . . no State, Territorial, county, municipal, or local taxing authority shall impose any tax on such associations or their franchise, capital, reserves, surplus, loans, or income greater than that imposed by such authority on other similar local mutual or cooperative thrift and home financing institutions." Plaintiff contends that the tax imposed on its personal property by the defendant for the fiscal years 1959-60 and 1960-61 is null because it violates said congressional mandate on the ground that other local institutions, similar to it, are either wholly or partially tax exempt. Plaintiff specifically mentions the Puerto Rico Government Employees Association [1] (3 L.P.R.A. § 858), credit unions (7 L.P.R.A. § 694), and cooperative building, savings, and loan associations (14 L.P.R.A. § 366).

[1] That is the official name of the former "Savings and Loan Fund Association of the Employees of the Insular Government of Puerto Rico". 3 L.P.R.A., Cum. Sup. § 831.

We shall begin with the latter. The only difficulty encountered by plaintiff here is that any cooperative building, savings, and loan association that may have been organized under the provisions of 14 L.P.R.A. §§ 351-370, does not exist any more as such, nor does it, as such, enjoy any tax exemption ever since the law of private corporations of 1911 (14 L.P.R.A. §§ 1-370) was repealed by the General Corporation Law of 1956 (14 L.P.R.A., Cum. Sup., §§ 1101 et seq.), as amended by Act No. 32 of June 9, 1956 (14 L.P.R.A., Cum. Sup. § 2502(b)).

We shall now see whether the Puerto Rico Government Association and credit unions (which are in fact exempt from property taxes) may be considered as other mutual or cooperative thrift and home financing institutions, similar to plaintiff.

The Home Owners' Loan Act of 1933 authorizes the organization of associations like plaintiff "In order to provide local mutual thrift institutions in which people may invest their funds and in order to provide for the financing of homes . . ." 12 USCA § 1464(a). Hence, they are associations for the investment of savings for home financing, the latter being its main purpose. *State* v. *Minnesota Federal Savings & Loan Ass'n*, 15 N.W. 568, 574 (1944). Their activities are not limited to any particular persons although they may only make loans secured by their own shares (represented by the savings of the borrower) [2] or first mortgages on homes or the combination of homes and business properties located (in general terms) within 50 miles from their main office. 12 USCA § 1464(c).

The Puerto Rico Government Employees Association is, unlike plaintiff, " . . . a public institution, compulsory upon all permanent public employees and officials of the

[2] See Rules & Reg. for the Federal Savings and Loan System (24 C.F.R., Ch. I(c)), § 141.4.

Commonwealth Government of Puerto Rico rendering services in Puerto Rico, . . . the purposes of which shall be to stimulate saving among its members and to insure them against physical disability or death, to make loans, to provide them with homes and clinics for medical treatment for themselves and their families, and any other activity which the board of directors may, after study, deem beneficial and adequate for the purposes hereof, subject to the laws which govern said association; and to promote by all available means and resources the betterment and individual and collective progress of the members thereof . . ." 3 L.P.R.A. § 831. Saving is also fixed and compulsory, for which purpose 3% of the employees' monthly salary is deducted, § 832. Employees may not dispose of their savings so accumulated except when they resign their offices (which savings, in case of death, are turned over to the beneficiaries). § 833. Loans may be personal, with or without sureties, or they may be mortgage loans secured by the collateral of their savings and any funds they may have in the Retirement Board, or the additional collateral of two sureties. §§ 838-843, 847. The amount of the loan plus interest is deducted from their salaries in monthly instalments. § 840. Employees, in addition, may avail themselves, if qualified, of a mutual life and physical disability insurance. § 851. And the Association is also authorized to "establish consumption cooperatives, and building cooperatives for the building of dwellings for the members . . . " § 854.

Undoubtedly, as may be seen from the preceding summary of the Act creating the Puerto Rico Government Employees Association, the latter is not a mutual or cooperative thrift and home financing institution, similar to plaintiff. The substantial difference is that the Employees Association is limited to a class—the employees of the Government of Puerto Rico—and operates for their par-

ticular benefit by reason of their condition as public servants, whereas plaintiff's operations are open to all kinds of people, without any distinction. Other characteristics of the Employees Association substantially differentiating it from plaintiff are (1) its compulsory nature, (2) the obligatory nature of fixed savings deducted from the employees' salaries, and (3) that savings may not be withdrawn except at the termination of public service. And to conclude with this brief summary, it is enough to point out also that the Employees Association is neither properly nor merely a thrift and home financing institution. Rather, its purposes are, as it must have been seen, wider in scope.

Finally, let us find out whether or not "asociaciones cooperativas de credito" (7 L.P.R.A. §§ 651-695) are institutions similar to plaintiff. We shall begin by saying that "asociaciones cooperativas de credito" are the same associations known in English as "credit unions" (7 L.P.R.A. § 651(b)). The differences substantially distinguishing this type of association from federal savings and loan associations created under the Home Owners' Loan Act are thoroughly examined in *State* v. *Minnesota Federal Savings & Loan Ass'n*, *supra*, pp. 572-574, and we refer to it. It is desirable, however, to underline the most outstanding differences. Credit unions have " . . . the double purpose of encouraging saving among its members and of affording credit at reasonable rates of interest to such members for their urgent personal or legitimate business requirements", § 651(b). They are not, unlike plaintiff, savings and investment institutions for home financing. Credit unions may make loans exclusively to their members [3] and only for their urgent personal needs or for their

[3] Members are those who have subscribed at least one share of the cooperative. § 665.

businesses. §§ 657(b) and 680. And, also unlike plaintiff, "The organization of credit unions shall be limited to persons who have a bond of common interest either through their work or through common membership in some organization; or to groups residing in well-defined neighborhoods, such as communities, barrios, or small towns and their barrios." § 663. See also § 695.

Since in Puerto Rico no other institutions similar to plaintiff are exempt from the payment of taxes on their personal property, the complaint is dismissed in each one of the above-captioned two cases.

Let this judgment be registered and served.

San Juan, Puerto Rico, June 21, 1961.

(s)RAMON CANCIO
Judge

I attest:

C. ADELLE R. DE MORALES
Clerk
By: (s) C. L. NEGRONI
Assistant Clerk

(SAME TITLE OF THE JUDGMENT)

Civil No. 60-2818
No. 60-10186

NOTICE OF JUDGMENT

To: Mr. Luis F. Candal, Dept. of Justice, San Juan, P. R.
Mr. Pablo Defendini, Box 221, Arecibo, P. R.

You are hereby notified by the undersigned clerk that on June 21, 1961, this Court entered judgment in the above-captioned case, which judgment was duly registered and filed in the record of this case, from which you may learn the details thereof.

And since you are or represent the party aggrieved by the judgment entered—which judgment may be appealed

from—I address this notice to you, after filing a copy thereof in the record of this case on June 22, 1961.

San Juan, Puerto Rico, June 22, 1961.

C. ADELLE R. DE MORALES
Clerk
By: (s) C. L. NEGRONI
Assistant Clerk

Provisions of the Banking Law of Puerto Rico creating the Savings and Loan Labor Bank of Puerto Rico (Law No. 86 of June 14, 1960, Laws of Puerto Rico, 1960, pp. 162 et seq., 7 LPRA 801 et seq.)

"Section 801. *Creation of Savings and Loans Labor Bank of Puerto Rico.*

The creation of a corporation to operate under the name of "Savings and Loans Labor Bank of Puerto Rico", hereinafter to be referred to as the Labor Bank, is hereby authorized."

"Section 802. *Purpose; activities.*

The purpose of the Savings and Loans Labor Bank of Puerto Rico is to promote the welfare of the Puerto Rican workers by encouraging regular and systematic saving on their part, and the utilization of such savings, in addition to other resources the institution may avail itself of, for (a) meeting the legitimate credit needs of the workers, and (b) facilitating the creation of new employment sources and the expansion and improvement of those already existing, for which reason its public end is in all respects for the benefit of the people of Puerto Rico.

In the attainment of this purpose the Labor Bank shall lend particular attention to the following activities:

(a) Develop and establish mechanisms or systems that will encourage and facilitate regular savings on the part of workers—preferably through the purchase of stock of

the Labor Bank—and on the part of other moderate-income persons.

(b) Facilitate the depositing in the Bank of the financial resources accumulated by labor unions, in order that the same may be utilized for directly benefiting the workers themselves.

(c) Help meet the legitimate personal and mortgage credit needs of the workers and other moderate-income persons.

(d) Help finance housing, educational, cultural, and other kinds of programs that may be developed by the labor unions for the benefit of their members.

(e) Contribute toward the expansion of employment opportunities and the increasing of the worker's income through the granting of credit, particularly intermediate and long-term credit, to productive undertakings operating in Puerto Rico.

(f) Develop, on its own account or in collaboration with other entities, educational programs aimed at encouraging among workers the sound and far-seeing management of their finances."

"Section 805. *Classes of stock*

The capital shall consist of three types of common stock: Class "A" shares, class "B" shares, and class "C" shares, which shall have the same par value. The class "A" shares shall be voting stock and shall be owned by persons who are accredited members of recognized labor unions in Puerto Rico. Class "A" shares shall cease to be voting stock and to draw dividends when no longer owned by persons who are accredited members of labor unions officially recognized in Puerto Rico. In such case such shareholders shall be bound to offer same for sale to the Bank at their book value at the Bank's treasury. Should the latter not accept the offer in the term of thirty (30) days, the shareholder is free to sell same to any duly accredited member

of an officially recognized labor union. If the bank accepts the offer it shall dispose of each share so acquired by selling the same to an accredited member of a recognized labor union, during the six months following the exchange of the share.

Class "B" shares shall not be voting stock and shall be owned by recognized labor unions in Puerto Rico. Class "C" shares share not be voting stock and shall be owned by the welfare, pension and retirement funds of the labor unions recognized in Puerto Rico. No union may at any time own more than 15 per cent of the totality of class "B" shares issued. At no time shall there be a higher proportion than three (3) class "B" shares for each class "A" share.